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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Gerald C. Mann
Attorney General

Honorable R. Judson Balch
County Attorney
Baylor County
Seymour, Texas

Dear Sir:

Opinion No. 0-3816

Re: Whether the described services
furnished by a public utility
corporation subject the corpora-
tion to the provisions of Article
7428a, V.A.C.S.

Your letter of July 24, 1941, recites that a public utility corporation furnishing electric power within your County also operates an ice plant and wholesales and retails ice; that in the selling of ice the corporation has committed acts calculated to prevent or hinder legitimate competition in the ice business. Pertaining thereto, you ask our opinion upon the question stated by you as follows:

"Is this particular service, furnished by a public utility, of such a nature as to come within the provisions of Article 7428a, Revised Civil Statutes, Sections I & II; and if so, do the acts of this company constitute a discrimination which is prohibited by the Statute?"

Section 1 and Section 2 of Article 7428a (Acts 1935, 44th Legislature, page 118, Chapter 44) read as follows:

"Section 1. That monopolies are contrary to the public policy of the State of Texas; and it shall hereafter be unlawful for any person, company, partnership or corporation, domestic or foreign, doing business in the transportation and/or sale of natural gas, electric current and power, telephone services, telegraph services, and/or similar public utilities to wilfully and intentionally do any act whatever to prevent or hinder any legitimate competition in such business.

"Section 2. It shall hereafter be unlawful for any person, partnership, company, or corporation, domestic or foreign, engaged in any such a public utility business in more than one municipality or county in this State, to discriminate in rates, prices, or kind of services in favor of any person, partnership, company, corporation or municipality for the purpose of preventing or hindering competition in such business or injuring a competitor." (Emphasis ours)

It is manifest, in our opinion, that this law was enacted to regulate public utility corporations when engaged in rendering public utility services. The expressions "and/or similar public utilities" and "in such business" demonstrate this intent.

It is our opinion, moreover, that the ice business cannot be held to be a public utility within the purview of this act. In *Gulf States Utility Company vs. State*, 46 S.W.(2d) 1018, 1021, 1022, (writ refused) it was said:

"We therefore conclude that, in absence of a legislative enactment, the manufacture and sale of ice to the public in Texas is not a public utility business as a matter of law.

"In deciding the above question, we are not holding that a legislative enactment declaring ice to be a public utility, or that the ice business is affected with the public interest and subject to some character of public regulation, would not be upheld by the courts. No such legislation has been enacted in Texas, and that question need not be determined in this case."

The case involved a public utility corporation engaged in an acknowledged public utility business and, in addition, in the ice business. The "Appellant contended that ice had grown to be a commodity needed and used by the public so generally that it had become a public necessity, and that its business of manufacturing and selling ice to the public in Texas was therefore a public utility business, and entitled to classification under the Franchise Tax Act as a 'public utility corporation'. . . ."

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The court exhaustively reviewed the authorities in and out of Texas and reached the conclusion stated above.

We conclude likewise in the construction of Article 7428a. It is our opinion that a corporation will be subject to its specific provisions only in relation to its business which, as a matter of law in Texas, is a public utility business.

We have pretermitted any discussion of other statutes of Texas which might be applicable to the situation you have described. We construe your request to be with reference to the statute discussed, and to it only.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (Signed) ZOLLIE C. STEAKLEY
Assistant

APPROVED AUG 7, 1941

(Signed) GROVER SELLERS
FIRST ASSISTANT ATTORNEY GENERAL

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APPROVED OPINION COMMITTEE
BY REK CHAIRMAN

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